

shall submit to USD(C)(P/B) information supporting the agency's determination that this requirement has been met.

(4) If the value of a multiyear contract for a particular system or component exceeds \$500 million, use of a multiyear contract is specifically authorized by—

(i) An appropriations act (10 U.S.C. 2306b(1)(3)); and

(ii) A law other than an appropriations act (10 U.S.C. 2306b(i)(3)).

(5) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(6) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(b))).

(7) All other requirements of law are met and there are no other statutory restrictions on using a multiyear contract for the specific system or component (10 U.S.C. 2306b(i)(2)). One such restriction may be the achievement of specified cost savings. If the agency finds, after negotiations with the contractor(s), that the specified savings cannot be achieved, the head of the agency shall assess the savings that, nevertheless, could be achieved by using a multiyear contract. If the savings are substantial, the head of the agency may request relief from the law's specific savings requirement. The request shall—

(i) Quantify the savings that can be achieved;

(ii) Explain any other benefits to the Government of using the multiyear contract;

(iii) Include details regarding the negotiated contract terms and conditions; and

(iv) Be submitted to OUSD (AT&L) DPAP for transmission to Congress via the Secretary of Defense and the President.

(f) The Secretary of Defense may instruct the head of the agency proposing

a multiyear contract to include in that contract negotiated priced options for varying the quantities of end items to be procured over the life of the contract (10 U.S.C. 2306b(j)).

(g) The head of an agency shall not award a multiyear contract using fiscal year 2005 appropriated funds unless—

(1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract;

(2) Cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract; and

(3) The contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units (Section 8008 of Pub. L. 108–287).

(h) Do not award a multiyear contract using fiscal year 2005 appropriated funds that provides for a price adjustment based on a failure to award a follow-on contract (Section 8008 of Public Law 108–287).

[66 FR 63338, Dec. 6, 2001, as amended at 68 FR 50475, Aug. 21, 2003; 70 FR 24324, May 9, 2005]

217.173 Multiyear contracts for weapon systems.

As authorized by 10 U.S.C. 2306b(h) and subject to the conditions in 217.172(e), the head of the agency may enter into a multiyear contract for—

(a) A weapon system and associated items, services, and logistics support for a weapon system; and

(b) Advance procurement of components, parts, and materials necessary to manufacture a weapon system, including advance procurement to achieve economic lot purchases or more efficient production rates (see 217.174 regarding economic order quantity procurement).

[70 FR 24325, May 9, 2005]

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) The head of the agency must provide written notice to the congressional defense committees at least 30 days before awarding—